IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 663.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, *Appellants*,

v.

CAPITAL TRANSIT COMPANY, ALEXANDRIA, BARCROFT AND WASHINGTON TRANSIT COMPANY, ARLINGTON AND FAIRFAX MOTOR TRANSPORTATION COMPANY, ET AL.

PETITION FOR REHEARING.

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PETITION FOR REHEARING.

The Appellees, Capital Transit Company, Alexandria, Barcroft and Washington Transit Company and Washington, Virginia & Maryland Coach Company, respectfully petition the Court to grant a rehearing in the above entitled case with regard only to the second part of the Opinion and as grounds for the petition state as follows:

1. The Court has apparently laid down a new rule of law—never heretofore understood to be the law—namely, that if a large number of passengers board a local city bus or street car, with the unexpressed intention of using another bus company to cross a State line, an interstate through route exists even though there are no through tickets or arrangements for through passage. On that basis through routes could be said to exist between the buses and street cars of Transit Company on the one hand,

and the Pennsylvania Railroad and the Greyhound bus lines, as well as every other interstate bus line and railroad in the United States. This is a major innovation in motor carrier law and if the Court intended that result, it ought clearly to so hold.

The three cases cited by the Court dealt with freight traffic, by railroad, over routes for which arrangements for through carriage had been made by the participating carriers. Here the case involves *passenger* traffic and there was no arrangement of any kind whatever between Transit Company and the Virginia companies.

Exactly as this Court pointed out in New York Central R. R. v. Mohney, 252 U. S. 152, 156, the only contract between the carrier and a passenger who boards a local vehicle and pays the local intrastate fare, is to carry him on a local intrastate journey and his mental state cannot change the terms of that fare contract. In that case this Court held that one who boarded a train with a pass good only within the State of Ohio, intending to buy an interstate ticket at the end of the intrastate ride, was entering upon an intrastate (not interstate) journey. That decision is apparently overruled in the present case.

2. The Court apparently misunderstood the facts as to the total absence of any interconnecting facilities or arrangements between the Transit Company and the Virginia companies. The Virginia companies operate from points in the downtown area of Washington to points throughout the northern part of Virginia, including the four government installations involved in this proceeding. Transit Company conducts no bus operations into Virginia except the temporary, wartime, rush-hour service to the Pentagon only. There are not and never have been any arrangements or combination fares between the companies; the operations are wholly independent. The decision of the Court creates through routes from any point in the District of Columbia to any of the four installations in Virginia and, for all practical purposes, to any point in northern

Virginia. Just as hundreds of District residents travel to the four installations to work, so do hundreds of Virginia residents come into Washington to work. The same situation undoubtedly exists in every big city in the country which is near a State line.

There are no transfer privileges between companies. A passenger does not merely step from one vehicle to another, but employs a separate company for the second half of his journey. The Court apparently understood that a transfer from a Transit Company local street car or bus entitled the holder to travel to the Pentagon on the lines of that company. That is not true. The passenger on the Q-2 lines pays a five cent fare just as does the passenger on the R-2 line. It is true that in order to board a Q-2 bus, the passenger must exhibit also a transfer or other evidence of a District fare. No transfer is permissible on the R-2 line.

3. Commutation fares are not specifically mentioned in the Opinion but the effect of the decision is to hold that the Commission may lawfully *require* the establishment of such fares, thus upsetting an administrative construction of 35 years' standing. The rule has been that the Commission has no such power. (Appellees' Brief, pp. 56 et seq.). Joint commutation fares have never existed between any of the Appellees.

4. The fares prescribed for the Transit Company violate an express prohibition in the Motor Carrier Act and deprive that company of even the cost of its operations.

Section 216(e) of the Act provides:

> "That nothing in this part shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation or for any service connected therewith, * * * for any * * purpose whatever."

In the present case the Commission prescribed the fares as follows: (R. p. 814):

> "For local application over bus and bus-streetcar lines of respondent Capital Transit Company * * *fares the same as those maintained within the District of Columbia* * *".

The "fare maintained within the District of Columbia" is fixed by local authority and entitles the holder to a ride *within* the District of Columbia only—an intrastate ride. The Commission orders the same fare to be good also for interstate transportation into and through a portion of the State of Virginia.

Furthermore, the Commission found that the out-of-pocket cost to Transit Company of the Pentagon operation was five cents per passenger per one-way trip. That was the exact fare charged for the Pentagon trip, now to be eliminated under the order of the Commission, sustained by this Court.

The Court has apparently held in its opinion in this case that the Interstate Commerce Commission can enlarge the scope of the service to be rendered for an intrastate fare fixed by local authority, and can do so without regard to or allowance for the extra costs involved. We submit that such a rule would be an innovation which should be clearly stated if the Court intends that result.

5. The proposed fares will adversely affect the war effort since they will result in unevenly spreading the passenger load and overburdening limited facilities. The fare prescribed for Transit Company to the Pentagon is substantially less than the joint rate (13⅓ cents) prescribed for the same trip on vehicles of two different companies. The inevitable effect will be to shift to Transit Company a substantial portion of the passenger traffic from the Virginia companies. The latter are in a better position to carry the passengers on their return trips to Virginia. Transit Company cannot, under war conditions, add to the

service to care for such additional load without robbing its regular service in the District of Columbia—a result inimical to the public interest.

6. This is a case of national importance and the principles established by the decision are applicable to every local transportation operation in the country.

It is respectfully urged that this petition for rehearing be granted.

Respectfully submitted,

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CERTIFICATE OF COUNSEL.

We, counsel for the Appellees herein named, do hereby certify that the foregoing petition for rehearing in this cause is presented in good faith, and not for delay.

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